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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

70-5040

No. ~~6061~~

JACK L. MAYER,

Appellant,

v.

THE CITY OF CHICAGO,

Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS

BRIEF FOR APPELLANT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 6061

JACK L. MAYER,

Appellant,

v.

THE CITY OF CHICAGO,

Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS

BRIEF FOR APPELLANT

Appellant prays that, as a poor person, he be provided the report of proceedings at his trial so that he can present certain alleged errors on appeal to the Supreme Court of Illinois.

OPINION BELOW

The opinion of the Supreme Court of Illinois denying that portion of Appellant's motion which requested a report

of proceedings as a poor person (hereinafter "free transcript") is unreported and is set forth in the Appendix. (A. 46)*

JURISDICTION

The order of the Supreme Court of Illinois denying Appellant's motion for a free transcript was entered September 18, 1970 and was final then. Notice of appeal to this Court was filed in the Circuit and Supreme Courts of Illinois on October 20, 1970. Probable Jurisdiction was noted on February 22, 1971. Jurisdiction is conferred by the U.S. Constitution, Amendment 14, and 28 U.S.C. § 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 14 to the United States Constitution provides that:

> "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Rule 607(b) of the Supreme Court of Illinois (110A Ill. Rev. Stat. § 607(b)(1970)) provides as follows:

> "Report of Proceedings. In any case in which the defendant is convicted of a *felony*, he may petition the court in which he was convicted for a report of proceedings at his trial. If the conduct on which the felony case is based was also the basis for a juvenile proceeding which was dismissed so the felony case could proceed, the defendant may include in his petition a request for a report of proceedings in the juvenile proceeding. The petition shall be verified by the petitioner and shall state facts showing that he was at the time of his convic-

*Citations to the Appendix are hereinafter designated (A. __).

> tion, and is at the time of filing the petition, without financial means to pay for the report. If the judge who imposed sentence, or in his absence any other judge of the court, finds that the defendant is without financial means with which to obtain the report of proceedings at his trial, he shall order the court reporter to transcribe an original and copy of his notes. The original of the report shall be certified by the reporter and filed with the clerk of the trial court as provided below, and the copy shall be certified by the reporter and delivered to the defendant without charge. The reporter who prepared a report of proceedings pursuant to an order under this rule shall be paid the same fee for preparing the transcript as is provided by law for the compensation of reporters for preparing transcripts in other cases." (Emphasis supplied.)

The ordinances of the City of Chicago, Illinois, defining the crimes with which Appellant was charged, the statutes and Constitutional provisions of the State of Illinois providing Appellant with an appeal of right, and the sundry Illinois Constitutional provisions, statutes, rules and orders relating to the provision of transcripts involved are too numerous to cite here, and are set forth *infra*, at pp. 1a-7a.

QUESTION PRESENTED

May a State, which furnishes court reporters at trial and grants appeals of right to defendants convicted of *non-felony* offenses, constitutionally refuse to provide a free trial transcript to an indigent defendant convicted of a *non-felony* offense who needs the transcript to have a minimally adequate appeal?

STATEMENT OF THE CASE

After a two-day jury trial in the Circuit Court of Cook County, Illinois (A. 3-6), Appellant (hereinafter "defendant") was found guilty of "disorderly conduct" and "interfering with a peace officer" in the performance of his lawful duties, in violation of two ordinances of the City of Chicago (Municipal Code of Chicago, Ch. 193, § 1(a) and Ch. 11, § 11-33, respectively) (*infra* at 1a). Under these charges, defendant faced a possible penalty of a $1,000 fine: $500 on each charge. He was actually fined $500: $250 on each charge (A. 4, 6). Illinois provides for imprisonment for nonpayment at the rate of $5 per day, 24 Ill. Rev. Stat. § 1-2-9. But *cf. Tate v. Short*, ___ U.S. ___, 91 S. Ct. 668 (1971).

After his convictions, defendant filed a post-trial motion seeking a new trial and alleging numerous errors at trial, including the contentions that the proof was insufficient to sustain the verdict, and that certain deliberate misconduct by the prosecutor was egregiously prejudicial and unconscionable (A. 11-23). This motion was denied (A. 25).

Thereupon, defendant moved in the Circuit Court of Cook County for leave to proceed as a poor person, for the production of his transcript at public expense, for the appointment of counsel for the purposes of appeal, and for the waiver of filing fees. After a hearing, the Acting Chief Judge of the Circuit Court of Cook County found the defendant to be indigent and unable to afford the transcript but denied defendant a free transcript on the sole ground that "defendant was found guilty of ordinance violations and that rule 607 of the Supreme Court applies [only] to felony cases" (A. 29). Although Illinois by Supreme Court Rule provides free transcripts on appeal to indigent persons convicted of a felony, *supra* at 2-3 , it nowhere provides free transcripts for indigent nonfelony appellants.

Notice of Appeal to the Illinois Supreme Court was then filed in the Circuit Court on the basis of constitutional

errors at trial. Illinois Constitution of 1870, Art. VI § 5 (A. 30). Defendant renewed his motion for leave to appeal as a poor person, for the production of his transcript, for the appointment of counsel, and for the waiver of filing fees before the full Illinois Supreme Court. Defendant argued in support of his motion that, under the rule of *Griffin v. Illinois*, 351 U.S. 12 (1956), and *Williams v. Oklahoma City*, 395 U.S. 458 (1969), the Fourteenth Amendment requires a State to afford indigent nonfelony appellants a free transcript wherever necessary to adequately present their appeals, and that therefore Rule 607 is unconstitutionally restrictive (R. 1-14).*

Defendant pointed out that two of his grounds for appeal require that he be furnished a transcript, namely (1) the inadequacy of the evidence to support the verdicts, and (2) the sustained, deliberate and prejudicial misconduct by the prosecutor. As to both contentions, the full facts are necessary, not subject to adequate recall, and available only if a transcript is furnished.

After six months' consideration of the motion, the Illinois Supreme Court denied defendant's request for a free transcript and for the appointment of counsel, while granting the waiver of filing fees (A. 46).**

SUMMARY OF ARGUMENT

The Fourteenth Amendment to the U.S. Constitution forbids a State from making "invidious discriminations" among its citizens, and in *Griffin v. Illinois*, 351 U.S. 12 (1956), this Court held that the failure of a State to

*Citations to the Record are to the certified Record from the Illinois Supreme Court and are hereinafter designated (R. __).

**The times for filing the record in the Illinois Supreme Court have been continued until final resolution of the transcript issue by this Court. Counsel for defendant is the same on appeal as at trial, and is willing to serve without compensation, so the motion for appointment in Illinois is not raised here.

provide an indigent appellant with a trial transcript, while making transcripts available to appellants with enough money to pay for them, is such an "invidious discrimination." *Griffin* was a felony case, and thereafter the Illinois Supreme Court promulgated its Rule 607(b), which limits free transcripts to indigent felony appellants only. In *Williams v. Oklahoma City*, 395 U.S. 458 (1969), however, this Court applied the *Griffin* rule to a "quasi-criminal" traffic ordinance violation, over the objection of Oklahoma City and the Supreme Court of Oklahoma that *Griffin* did not apply to such a case. Defendant's case here is identical in all important respects with that in *Williams*—he is indigent, a transcript of the trial exists, it is the only way to present an adequate appeal, and Illinois denies it to him solely because he is poor. But now Illinois also denies it to him in the face of *Williams v. Oklahoma City*.

For Illinois to deny defendant a free transcript solely because his convictions were not for felonies is to deny him Equal Protection of the law. Any nonfelony appellant convicted of a penal offense with enough money to pay the price gets an adequate appeal, but those without such means do not. No state can constitutionally provide for appeals from all criminal convictions as a matter of right, permit wealthy defendants who can afford a transcript to fully enjoy that right, and at the same time deny a transcript and thereby a full appeal to poor defendants.

Illinois has also deprived defendant of Due Process of Law, for without access to the transcript he is wholly foreclosed from effectively presenting at least two substantial contentions to the Supreme Court of Illinois: (1) the shockingly deliberate and prejudicial misconduct of the prosecution, and (2) the insufficiency of the evidence to sustain the convictions. It is clear from the face of these contentions that if defendant is to have an effective appeal, he must have access to the transcript. How can an appellate process be "due" or fundamentally fair which denies only the indigent the rudimentary predicate for presenting

the factual basis of his contentions on appeal—the official transcript in the court reporter's possession?

It is wholly unjustifiable to argue that indigent nonfelony appellants should be denied their Constitutional rights to a free transcript because of the speculation that the cost of providing transcripts to indigents will somehow enormously "burden" the State. Statistical analysis reveals this fear to be totally illusory; the number of nonfelony criminal appeals is quite small (dwindling as the penalty gets smaller), the number involving indigents and also requiring transcripts even smaller, and the "demand" for (or number of) nonfelony appeals is, as will be shown, almost totally inelastic with respect to the provision of free transcripts to indigents. Moreover, most nonfelony trials are very short and hence the transcripts would cost relatively little. And the supposed "burden" of providing indigents with free transcripts for all penal offenses, whether ordinance or statutory in origin, is one which at least several of our most populous States have already decided to assume.

The Constitutional protections insured by the availability of a transcript should be available to all persons convicted of an offense, regardless of the severity of the punishment, and regardless of whether they receive a suspended sentence, probation, a term in jail or fine. To one too poor to pay for a $300 transcript, a $1,000 fine is as severe a penalty as a term in jail. Certainly it is far more onerous than a suspended sentence or probation. Moreover, the risk of collateral civil disabilities is substantial, and the stigma of an offense follows the offender regardless of the sentence received. Because of these facts, no one unjustly penalized by the criminal law should be denied a transcript, and hence substantial justice, because of his poverty.

ARGUMENT

I. SIMPLY BECAUSE AN INDIGENT APPELLANT WAS CONVICTED OF NONFELONY OFFENSES, A STATE MAY NOT CONSTITUTIONALLY DENY HIM A FREE TRIAL TRANSCRIPT WHERE SUCH TRANSCRIPT IS NECESSARY TO EFFECTIVELY PRESENT HIS CONTENTIONS ON APPEAL.

A. The Constitutional Standard: a convicted indigent must be afforded *as adequate an appeal* as a person with funds.

The Fourteenth Amendment to the United States Constitution forbids a State to "deny to any person within its jurisdiction the equal protection of the laws" or to "deprive any person of life, liberty, or property without due process of law." (*Supra* at 2.) Fifteen years ago, in *Griffin v. Illinois*, 351 U.S. 12 (1956), this Court fleshed out those words by holding that a State with an appellate system which makes available trial transcripts to those who can afford them must provide a "means of affording adequate and effective appellate review to indigent defendants." *Id.* at 20. "Destitute defendants," the Court said, "must be afforded *as adequate appellate review* as defendants who have money enough to buy transcripts." *Id.* at 19 (emphasis supplied). "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." *Id.* at 19.

In *Burns v. Ohio*, 360 U.S. 252 (1959), this Court reaffirmed the *Griffin* doctrine, saying that "once the State chooses to establish appellate review in criminal cases, it may not foreclose indigents from access to any phase of that procedure because of their poverty." *Id.* at 257. "In all cases the duty of the State is to provide the indigent *as adequate and effective* an appellate review as that given appellants with funds—the State must provide the indigent defendant with means of presenting his contentions to the appellate court which are as good as those available to a non-indigent defendant with similar contentions." *Draper*

v. Washington, 372 U.S. 487, 496 (1963) (emphasis supplied). Accord: *Williams v. Oklahoma City*, 395 U.S. 458 (1969); *Roberts v. LaVallee*, 389 U.S. 40 (1967); *Long v. District Court of Iowa*, 385 U.S. 192 (1966); *Lane v. Brown*, 372 U.S. 477 (1963); *Smith v. Bennett*, 365 U.S. 708 (1961); *Eskridge v. Washington*, 357 U.S. 214 (1958); *Douglas v. California*, 372 U.S. 353 (1963).

B. If defendant had funds, he would have a transcript and a full appeal.

Illinois grants an appeal of right to indigent defendants convicted of "disorderly conduct," "interfering with a peace officer," or any other offense, whether prosecuted by the State or by the municipality. (*Infra* at 3a.)[1] Illinois also provides court reporters in all trials in the Circuit Courts, which are the lowest trial courts in Illinois. 37 Ill. Rev. Stat. §§ 651 *et seq.* (Smith-Hurd ed., 1970).[2] See, *e.g.*, Circuit Court of Cook County, General Order No. 17.6, "Official Court Reporter." A court reporter was in fact present and took notes at defendant's trial. Before these notes can be made up into a transcript, certified and delivered to defendant, a cash sum in the amount of approximately $300 must be paid to the Transcript Department of the Clerk's Office of the Circuit Court of Cook County, Illinois.[3]

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[1] Whether the appeal lies with the Illinois Supreme Court or with the Illinois Appellate Court depends upon the nature of the case or the nature of the contentions raised. Illinois Constitution of 1870, Article 6, §§ 5, 7 (*infra* at 3a). If a case is erroneously appealed to the wrong court, it is transferred without any loss of rights to the correct court. 110A Ill. Rev. Stat. § 365 (Illinois Supreme Court Rule 365).

[2] All citations to Ill. Rev. Stat. are, unless otherwise indicated, to the State Bar Association Edition (1969).

[3] Estimate received by counsel from the court reporter. The rate for transcription is $.25 per 100 words, 37 Ill. Rev. Stat. § 655 (*infra* at 6a-7a), or $.75 per page.

Because defendant is indigent, and solely because of that fact, he is deprived of that transcript on appeal.

C. Without a transcript, defendant will be denied the essence of his appeal.

From the face of defendant's contentions, it is clear that he must have the transcript to have any meaningful appeal.[4] He alleges that he was unjustly and improperly convicted, that there were grievous errors committed at his trial which

[4]The Fourteenth Amendment has been held to require an indigent appellant to be supplied with a transcript where it is available regardless of the demonstration of a "need" for it, because to force an indigent to rely on memory is inherently unequal and unfair. *Long v. District Court of Iowa*, 385 U.S. 192, 194-195 (1966); *Gardner v. California*, 393 U.S. 367, 369-370 (1969); *Milani v. Illinois*, 386 U.S. 12 (1967), reversing summarily *People v. Milani*, 34 Ill. 2d 524 (1966); *Roberts v. LaVallee*, 389 U.S. 40 (1967). Without a transcript, for instance, the ability to reverse for "plain error" is lost. See *Hardy v. United States*, 375 U.S. 277, 280, 288-289 (1964); Illinois Supreme Court Rule 615(a), 110A Ill. Rev. Stat. § 615(a). A transcript is "the obvious starting point" for appeal, *Gardner v. California*, 393 U.S. 367, 370 (1969), even for counsel that represented the defendant at trial. To deny trial counsel the transcript makes his memory—and not the court's full review or the fresh view of another counsel—the final arbiter of the points on appeal. Such inequality was held unconstitutional in *Eskridge v. Washington Prison Board, supra*, and *Draper v. Washington, supra*. But even beyond these considerations, the lack of a transcript for an indigent's appeal inevitably involves counsel in a moral and ethical dilemma—a double standard of responsibility between paying clients and indigent clients. See *e.g.*, ABA Code of Professional Responsibility Canons 2, 6 (Am. Jur. 2d "Desk Book," pp. 81, 103-104 (1970 Cum. Supp.)). This double standard also violates counsel's sense of minimal professional responsibility:

> "No responsible retained lawyer who represents a defendant at trial will rely exclusively on his memory (even as supplemented by trial notes) in composing a list of possible trial errors which delimit his appeal. . . . An appointed lawyer, whether or not he represented the defendant at trial, needs a complete trial transcript to discharge his full responsibility of preparing [the appeal]." *Hardy v. United States, supra* at 288 (Goldberg, J., concurring).

No showing of "need" for a transcript is therefore compatible with the Constitution.

made that trial a mockery of justice. As stated in defendant's post-trial motion (A. 11-23), it is expected the transcript will show that defendant, a third-year medical student without means, attended a march and rally conducted by various anti-war groups in Chicago, including SDS, not as a participant but as a "medical presence" (providing first aid assistance) under the aegis of the "Medical Committee for Human Rights," a national organization of doctors and medical students devoted to humanitarian causes. Defendant is not and never has been a member of SDS or any affiliated group. After a while, the marchers "broke" and ran. Defendant came upon an injured person lying in the street and, after a preliminary examination, diagnosed that the injured man, who was paralyzed from the waist down, had a "probable spine injury." Unheeding his protestations not to move the injured man without a stretcher, the police started to "drag him off." At this point defendant, in an attempt to keep the victim's spine "stable," placed his hands on the victim's stomach—and was thereupon arrested for disorderly conduct and interfering with the police. Over his protestations that this conduct did not constitute a crime, defendant was convicted by a jury. The defense of "necessity"—that his conduct was reasonably designed to avoid a great injury of overriding justification—was disallowed at trial (A. 16).

A transcript of proceedings is necessary in order for defendant to prove at least two points on appeal. Most importantly, he urges that the prosecutor, who at trial was still limping from an injury sustained during this very demonstration, was guilty of a sustained course of deliberate misconduct, which flagrantly prejudiced the jury against defendant. See *Berger v. United States*, 295 U.S. 78, 88 (1935); *People v. Stathas*, 356 Ill. 313, 321, 190 N.E. 661, 664 (1934). The burden is on defendant to prove this misconduct on appeal, and there is simply no way to do this without the transcript. Without it, defendant is unable to effectively support counsel's sworn statements to the Supreme Court of Illinois that (R. 10-11):

> "Throughout the trial, the prosecutor elicited testimony from witnesses regarding alleged violence at the march far removed from the immediate events surrounding appellant's alleged offense, regarding the political character of the march and regarding the fact specifically that Richard Elrod [now Sheriff of Cook County] had been injured during that particular march. The ingenuity and calculation with which the prosecutor steered testimony in these directions was quite remarkable. Consequently, a significant portion of the trial was occupied by defense counsel objections to these prejudicial and irrelevant lines of questioning. Defense counsel's objections were repeatedly sustained by the trial court. But the prosecutor was undeterred in his efforts to tar appellant before the jury with the brushes of anti-Americanism, violent proclivities and Richard Elrod's spinal injury. The prosecutor was so insistent in pursuing this course that these insinuations—in his very questions—time and again were placed before the jury, before defense counsel could object and the court could strike the questions. In his closing argument to the jury, the prosecutor repeated and enlarged upon these improper insinuations.
>
> "The prosecutor's conduct flagrantly violated the Canons of Ethics."

Defendant also alleges that the evidence was insufficient to sustain his conviction; more precisely, that certain testimony by the police was inherently incredible and that his defense of "necessity"—that his conduct was justified by the need to prevent great harm—was made out as a matter of law (A. 11-19). The net of this contention is that the Illinois Supreme Court should not reverse and remand for a new trial, but should discharge defendant entirely without subjecting him to a second prosecution.

Without a transcript, defendant is wholly unable to substantiate either of these contentions in appealing on the merits to the Illinois Supreme Court and must, as a practi-

cal and legal matter, forsake them.[5] Counsel elaborated this predicament in a sworn statement to that court (Supplemental R. 2, 2):

> "To sustain the allegations of error regarding insubstantiality of the evidence and the prejudicial impact of the prosecutor's misconduct on the record considered as a whole, the events at trial must be set out in the record in extensive and precise detail. Unless appellant has a full transcript he must rely essentially on his own and his trial counsel's memory. But because the trial lasted for three days, it is clear that many details which might ultimately be central to establishing (or, of course, rebutting) appellant's contentions have vanished from memory."

Defendant's need for a transcript is therefore patent. We turn to consider the effect of Illinois' alternate procedures on this need.

D. There is no adequate alternative to the transcript in this appeal.

It has long been recognized that a State need not "purchase a stenographer's transcript in every case where a defendant cannot buy it." *Griffin v. Illinois,* 351 U.S. 12, 20 (1956). "Alternative methods of reporting trial proceedings are permissible if they place before the appellate court an equivalent report of the events at trial from which the appellant's contentions arise." *Draper v. Washington,* 372 U.S. 487, 495 (1963). The fact that a rich person "may choose to waste his money . . . does not mean that the

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[5] Before an Illinois reviewing court can reverse on the grounds urged, it must consider "all the evidence," *People v. Gavurnik,* 2 Ill. 2d 190, 196, 117 N.E.2d 782, 785 (1954), the entire record, *People v. Gonzales,* 40 Ill. 2d 233, 242, 239 N.E.2d 783 (1968), and "where the record on appeal is incomplete, the reviewing court will indulge every reasonable presumption favorable to the judgment appealed from." *People v. Rockett,* 85 Ill. App. 2d 24, 228 N.E.2d 219, 223 (1967).

State must waste its funds. . . ." *Id.* at 496. If adequate, an agreed statement of the facts, a full narrative statement based on the trial judge's minutes or a bystander's bill of exceptions could all suffice.

The Illinois Supreme Court has adopted procedures for securing such substitute means of appeal—an agreed statement and a "settled" statement. Illinois Supreme Court Rule 323(c) and (d) (*infra* at 4a). But whatever the merits of these substitutes generally,[6] they are obviously completely inadequate here—they cannot present the minimum required factual basis for supporting defendant's contentions on appeal. If such substitutes were used, defendant would not be "heard." Such "process" could hardly be deemed "due."

Rule 323(c) provides that the appellant may prepare a proposed report of proceedings "from the best available sources, including recollection."[7] This "proposed report," if contested, is "settled" by the trial court and the report so "settled" is deemed "accurate" (*infra* at 4a). But defendant has amply demonstrated that the nature of his contentions requires him to present the Illinois Supreme Court with the kind of exact record which is wholly beyond his or anyone's capacity to reconstruct without a transcript. Moreover, if defendant had attempted to proceed under this Rule, he would have been placed in a procedural trap; if he had submitted a (necessarily woe-

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[6]See Illinois Civil Practice After Trial § 7.8, (Ill. Institute for Contemporary Legal Education, E. Kionka, ed. 1970) (casting doubt on the adequacy of the procedure for a settled statement); Subin, *Criminal Justice in a Metropolitan Court* 83 (Office of Criminal Justice 1966).

[7]An "agreed" statement would come from the same sources. Here, however, as the prosecuting attorney in his capacity as counsel for Appellee now concedes in this Court, agreement on the facts "in the instant case might be difficult or impossible" (Motion to Dismiss or Affirm at 6), because of the contention raised as to his own prejudicial misconduct.

fully inadequate) "proposed report," and it was "settled" or "agreed," he probably would be held to have bound himself to it by conduct inconsistent with the assertion of a right. See, *e.g., McCottrell v. Benson,* 32 Ill. App. 2d 367, 178 N.E.2d 144 (1961).

It is furthermore true that under Illinois law the burden of proof rests upon the Appellant to "substantiate matters contained in the contested report." *People v. Andrews,* 82 Ill. App. 2d 59, 227 N.E.2d 91, 94 (1967). Thus in "settling" the statement, the weight is not distributed evenly; it is tilted against the defendant. Not only is he forced to rely, as here, upon fleeting and incomplete memory, but then the burden is placed upon him to substantiate what it is he can barely, if at all, recall. And he must do so in the face of hostile and differing recollections by the prosecutor, and possibly even by the court. Unless their recollection agreed with his, his version—no matter how honestly prepared—would not be accepted. Such a procedure might be compatible with due process for General Motors, which can hire a team of stenographers to mark down the testimony during trial. But such a procedure, applied to an indigent and his counsel, does not even supply a rudimentarily fair procedure. It forces them to choose between being advocates and being reporters; no one can transcribe and conduct a trial at the same time.

Thus it is clear that defendant has no "means of presenting his contentions to the appellate court which are as good as those available to a non-indigent defendant with similar contentions." *Draper v. Washington,* 372 U.S. 487, 496 (1963). Indeed, without the transcript, he has *no means* of adequately presenting these contentions at all. Such a total deprivation of the right of effective appeal not only draws an "unreasoned distinction" between rich and poor in violation of the Equal Protection Clause, but it must also "offend the deepest presuppositions of our society" and violate Due Process as well. *Griffin v. Illinois,* 351 U.S. 12, 22 (1956) (Frankfurter, J., concurring).

Having determined that no alternative to his transcript could provide defendant with an "adequate and effective" appeal, we turn now to consider whether Illinois may constitutionally refuse to afford defendant that transcript.

E: Illinois may not deny free transcripts to indigents convicted of nonfelony offenses.

Illinois Supreme Court Rule 607(b) grants free transcripts for use on appeal to all indigents convicted of a "felony," but denies free transcripts to all indigents convicted of offenses which do not qualify as "felonies"—which eliminates all offenses not punishable by over a year's imprisonment.[8] Thus although defendant was convicted of violating two penal municipal ordinances, "disorderly conduct" and "interfering with a police officer," Illinois does not furnish him with a transcript on appeal even though, as has been shown, he is indigent and must have his transcript to adequately present his appeal.[9] These

[8]The line between "felony" and "misdemeanor" under Illinois law generally turns on whether the statute violated provides for imprisonment for over one year. 38 Ill. Rev. Stat. §§ 2-7, 2-11, 1-7(L); *People v. Bain*, 359 Ill. 455, 195 N.E. 42, 49 (1935). Thus a "felon" sentenced to probation gets a free transcript while a "misdemeanant" sentenced to a full term in jail gets none. Besides "felons," Illinois grants free transcripts to all indigent "minors" convicted of "delinquency," regardless of whether the "delinquency" would otherwise be considered a "felony" or a "misdemeanor." 37 Ill. Rev. Stat. § 702-2 (Pocket Parts 1971); Illinois Supreme Court Rule 661 (*infra* at 5a); *In Re Boykin*, 39 Ill. 2d 617, 237 N.E.2d 460 (1968). Ironically, "delinquency" even includes "threatening" to violate a "municipal ordinance." Also, any indigent appealing from a "post-conviction" hearing has a right to a free transcript both of his hearing and also of his trial. Illinois Supreme Court Rule 615; 37 Ill. Rev. Stat. §§ 163(f)(2), (f)(3). "Post-conviction" relief in Illinois is limited to felony prisoners sentenced to the penitentiary who allege denial of their constitutional rights. 38 Ill. Rev. Stat. §§ 122-1 *et seq.*; 1-7(L). This crazy-quilt patchwork is itself wholly arbitrary and unconstitutional.

[9]The Illinois history on transcripts is noteworthy. Before *Griffin*, free transcripts were provided to indigents only in capital cases. *Griffin v. Illinois*, *supra* at 14. Sometime after *Griffin*, a "felony"

ordinances are called "quasi-criminal" under Illinois law, a designation which means the offenses are considered "criminal in nature" but "civil in form."[10]

1. *Williams v. Oklahoma City* controls this case.

Whatever doubts may have been entertained about the scope of *Griffin v. Illinois*, a felony case, before 1969, it is now perfectly clear that Illinois' attempt to deny defendant a free transcript solely because he was not convicted of a "felony" violates the Fourteenth Amendment; such an attempt runs directly afoul of this Court's decision in *Williams v. Oklahoma City*, 395 U.S. 458 (1969). There, the indigent petitioner was convicted for violating a city ordinance against drunken driving, denominated "quasi-criminal" in nature, and received a 90-day jail sentence and a $50 fine. His motion for a free transcript for appeal was denied by the Court of Criminal Appeals on the ground that the "Fourteenth Amendment does not mandate 'that an indigent person, convicted for a violation of a city ordinance, quasi-criminal in nature and often referred to as

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case, the Illinois legislature, in its new Code of Criminal Procedure, amended the rule to provide broadly for free transcripts to indigents "upon imposition of any sentence in a criminal case." 38 Ill. Rev. Stat. § 121-13(a) (1964). Under a provision which allowed certain portions of the Code to be superseded by Supreme Court Rule, 110 Ill. Rev. Stat. § 121-1 (1965), this broad right was almost immediately restricted to felony cases only, by action of the Illinois Supreme Court. 110 Ill. Rev. Stat. 101-27(b) (1965) (now Rule 607(b)).

[10] *Village of Maywood v. Houston*, 10 Ill. 2d 117, 139 N.E.2d 233 (1956); *Village of Park Forest v. Bragg*, 74 Ill. App. 2d 87, 220 N.E.2d 61 (1966). These offenses are called "misdemeanors" if prosecuted by the State. 38 Ill. Rev. Stat. §§ 2-11, 26-1, 31-1. The Illinois Supreme Court has pointed out that:

> "The proceeding is not strictly or exclusively civil or criminal, but resembles both in some respects. For this reason, problems in this area cannot be solved by a mere labeling process, and the decisions of the courts, in Illinois and elsewhere, do not always have apparent logical consistency." *Village of Maywood v. Houston, supra*, 139 N.E.2d at 234.

a petty offense, is entitled to a case-made or transcript at city expense in order to perfect an appeal from said conviction.'" 395 U.S. at 459.

This Court, citing *Griffin*, reversed in an unanimous *per curiam* opinion, and stated that since Oklahoma has established the right to appellate review of drunken driving convictions, the State cannot "impede open and equal access to the courts . . . [so that it] wholly denies any right of appeal to this impoverished petitioner, but grants that right only to appellants from like convictions able to pay for the preparation" of a trial transcript. 395 U.S. at 459-460.

Williams v. Oklahoma City made clear that Griffin applies to penal offenses in municipal and traffic courts as well as in felony courts, and compels Illinois to afford defendant a free transcript here. The characterization of a penal offense by one name or another is irrelevant to an indigent person's right to equal and adequate review. An "invidious discrimination" is not less so because the possible penalty for the offense is imprisonment for over one year. The Fourteenth Amendment applies regardless of the size of the possible penalty or the penalty actually imposed. See *e.g.*, *Groppi v. Wisconsin*, 400 U.S. 505 (1971); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) ($10 fine). As this Court held in *Smith v. Bennett*, 365 U.S. 708, 712 (1961), in voiding a $4 filing for habeas corpus applications:

> "We shall not quibble as to whether in this context it be called a civil or a criminal action. . . . The availability of a procedure to regain liberty lost through criminal process cannot be made contingent upon a choice of labels."

2. *Williams v. Oklahoma City* cannot be distinguished on the basis of the penalty imposed or the seriousness of the offense.

The offense in *Williams v. Oklahoma City* was "drunken driving" and the penalty was 90 days in jail and a $50 fine. Defendant here was convicted of "disorderly conduct" and "interfering with a peace officer," was subject to a fine of

$1,000 on both charges, and was actually fined $500. Being indigent, defendant cannot pay the fines, and Illinois law provides that failure to pay a fine subjects defendant to imprisonment at the rate of $5 per day. 24 Ill. Rev. Stat. § 1-2-9 (1969) (*infra* at 7a). Thus under Illinois law, defendant faces 100 days in jail, almost one-third of a year.[11]

No distinction between this case and *Williams v. Oklahoma City* can be based on the fact that defendant here faces, at lease initially, the penalty of a serious fine rather than imprisonment. As noted, imprisonment for nonpayment is a distinct and present possibility under Illinois law even after *Tate v. Short*, ____U.S.____, 91 S.Ct. 668 (1971). But even apart from that, no distinction between jail and a serious fine is tenable. Who is to say whether a poor person would prefer 30 days, or 60 days, or 90 days, to $500 or $1,000 as a penalty? The imposition of a $1,000 fine, or a $500 fine, on a poor person (or even on a person of moderate means for that matter), is *a substantial and serious burden to the conduct of everyday life.* A poor person's interest in avoiding that burden is "compelling." The State's interest in raising revenue by taxing transcript costs is, by comparison (and especially as applied to those unable to

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[11]In *Tate v. Short*, ___ U.S. ___, 91 S.Ct. 668 (1971), this Court held that a State may not imprison a person for failure to pay a fine, if that failure arises solely from an inability to pay, without first resorting to some alternative collection procedure. The Court was careful to indicate, however, that the decision is not "to be understood as precluding imprisonment as an enforcement method when alternative means are unsuccessful despite the defendant's reasonable efforts to satisfy the fines by those means." *Id.* at 672. While that contingency was left an open question, the execution of defendant's sentence here by the Illinois courts will not "await the presentation of a concrete case" in this Court. Thus the jail "contingency" is very real and immediate to him. Because of this inescapable fact; *Williams v. Oklahoma City* is indistinguishable on the basis of the penalty imposed and controls here.

pay), weak and insubstantial. *Cf. Boddie v. Connecticut*, ____ U.S. ____, 91 S. Ct. 780 (1971). See discussion, chapter III, post.

Most importantly, the civil consequences of convictions for these types of offenses are broad-ranging, nebulous, and serious. Defendant here is an impecunious medical student who in a few years will apply for a license to practice medicine. In New York, where he currently resides, an applicant must submit proof of "good moral character." 16 McKinney's Consol. Laws of N.Y. Anno. § 6506(2). See also Illinois "Medical Practice Act," 91 Ill. Rev. Stat. §§ 4(2); 14(2).[12] In New York, a physician's license to practice medicine can be revoked upon the showing of conviction of "a crime" or for "unprofessional conduct." 16 McKinney's Consol. Laws of N.Y. Anno. §§ 6514(2)(b) and (g). The standards of enforcement are vague and largely discretionary. There is no way of telling whether defendant's convictions here will preclude him from the practice of his chosen profession. Such a consequence makes absurd the contention that a penal offense is not serious simply because it does not directly involve a term in jail.[13]

It would certainly be hard to try to erect a distinction between this case and *Williams v. Oklahoma City* based upon the relative moral "seriousness" of the offenses charged. Being caught at "drunken driving" certainly involves no more (indeed probably less) moral stigma than knowingly

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[12]Compare attorneys' "Rules on Admission and Discipline of Attorneys," 110A Ill. Rev. Stat. § 701(a); *cf. In Re Anastaplo*, 18 Ill. 2d 182, 163 N.E.2d 429, *aff'd* 366 U.S. 82 (1961) (refusal to answer questions concerning possible "subversive" activities is sufficient evidence of lack of "good moral character"). The standard for disbarment is a practice "which tends to defeat the administration of justice or to bring the courts and the legal profession into disrepute." 110A Ill. Rev. Stat. § 751(a).

[13]Furthermore, the fact that these offenses appear on defendant's police criminal record, which often is furnished to prospective employers, is itself a disability of important magnitude. See *In Re Gault*, 387 U.S. 1, 24-25 (1967).

"interfering with a police officer" in the performance of his duties, and probably less than engaging in "disorderly conduct" or creating a "breach of the peace" as well. Both "interferring" and "disorderly conduct" are "penal" laws,[14] involving a certain degree of "moral delinquency" in common usage and also as that term has been applied. *Cf. Schick v. United States,* 195 U.S. 65 (1904); *Wisconsin v. Constantineau,* 400 U.S. 433 (1971). They are offenses which the common law would probably have categorized as *"malum in se,"* not *"malum prohibitum"* being acts of putative "moral turpitude." *Cf. District of Columbia v. Colts,* 282 U.S. 63 (1930) ("reckless driving" subjecting offender to $100 and 30 days is *malum in se* because it is an act of "obvious depravity.")[15] That is, it doesn't take the existence of any law for one to know that it is wrong to interfere with a policeman performing his duties or even to disturb others by disorderly conduct. Moreover, how can an offense which, if charged by the State rather than by the City, subjects a citizen to a year in jail[16] be anything but stigmatizing and

[14]See *Kennedy v. Mendoza-Martinez,* 372 U.S. 144, 168-170 (1963); "Defending an Illinois Proceeding for Violations of a Municipal Ordinance: The Worst of All Possible Worlds," 1 Loyola Chi. L. J. 86 (1970).

[15]See also *United States v. Smith,* 420 F.2d 428 (5th Cir. 1970) ("possession of untaxed whiskey" is an act of "moral turpitude"); Note, "The Distinction Between Mala Prohibitia and Mala in Se in Criminal Law," 30 Colum. L. Rev. 74, 77-78 (1930); Note, "Crimes Involving Moral Turpitude," 43 Harv. L. Rev. 117, 119-120 (1929). Forms of "disorderly conduct," usually involving sexual interest or display, have been held to be acts of "moral turpitude" subjecting the actor to deportation or exclusion from the country under the immigration laws. See *Babouris v. Esperdy,* 269 F.2d 621 (2d Cir. 1959); *Wyngaard v. Kennedy,* 111 U.S. App. D.C. 197, 295 F.2d 184 (D.C. Cir. 1961).

[16]Both "interfering" and "disorderly" are State as well as city offenses; indeed the City's ordinances were modeled on the State statutes. With "disorderly," the penalties are the same, but with "interfering," the State penalty is greater. See *infra* at 1a-2a. Whether the police choose to bring charges under the State or the city provisions is entirely in their discretion.

serious? *Cf. In Re Gault*, 387 U.S. 1 (1967); *In Re Winship*, 397 U.S. 358, 367 (1970).

Illinois has indicated the importance it ascribes to trials for violations of penal municipal ordinances by providing for the right to a trial by jury.[17] Defendant was tried by jury here (A. 3-6). This conclusion by the State as to the importance of the just resolution of these types of violations should be considered determinative by this Court of any possible contention that defendant's convictions are somehow too "trivial" to merit protection by the Fourteenth Amendment.[18] *Cf. Duncan v. Louisiana*, 391 U.S. 145, 160 (1968). It is absurd to say that an offense is "trivial" when the State has deemed it significant enough to provide a jury for the protection of the citizen. *Cf. Waller v. Florida*, 397 U.S. 387 (1970) (double jeopardy bars state trial after municipal trial). Such an erroneous notion of "triviality" was firmly rejected recently in *Tate v. Short*, ___ U.S. ___, 91 S.Ct. 668 (1971), in which this Court unhesitatingly applied the Equal Protection Clause to a fine of $425 imposed for some "traffic offenses," where an indigent was incarcerated for failure to pay. Defendant here,

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[17]Although Illinois law on the point is not totally explicit, it seems clear that, whether these ordinance violations are considered "civil" or "criminal," such a right is given by Article II, § 5 or § 9 of the Constitution of Illinois 1870 (*infra* at 2a-3a). Opinions of the Attorney General of Illinois 1912, p. 701; 110 Ill. Rev. Stat. § 64 (1969); 110A Ill. Rev. Stat. § 285 (small claims); *People v. Ford*, 45 Ill. App. 2d 289, 196 N.E.2d 1 (1963).

[18]This would not mean that a line could not be drawn in a later case such as was drawn in *Ex Parte Johnson*, 20 Okla. Cr. 66, 201 p. 533, 537 (1921), at a $20 fine, which would exclude parking tickets and minor traffic infractions. These types of violations are most often subject to "summary disposition" and do not fall within the jury requirement. Also, they are considered "regulatory" rather than "penal," because they are sanctions ancillary to a legislatively-created system of regulation of conduct which would not otherwise be deemed subject to punishment. See Note, 30 Colum. L. Rev. 74 (1930); Note, 43 Harv. L. Rev. 117 (1929), *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-170 (1963).

an indigent faced with the severe burden of a substantial fine, the loss of his good name and reputation, the possible loss of his chosen profession, and possible incarceration for non-payment, deserves no less.

Therefore, defendant should have received a free transcript under the prior decision of this Court in *Williams v. Oklahoma City*.

II.

REGARDLESS OF THE CONTROLLING FORCE OF *WILLIAMS V. OKLAHOMA CITY*, BOTH EQUAL PROTECTION AND DUE PROCESS PRINCIPLES REQUIRE ILLINOIS TO FURNISH A TRANSCRIPT TO AN INDIGENT NONFELONY APPELLANT.

As has been shown, the decision of this Court in *Williams v. Oklahoma City*, 395 U.S. 458 (1969), requires that Illinois furnish defendant with a free transcript so that he may enjoy an "adequate and effective" appeal. Even apart from the controlling impact of *Williams*, however, many other decisions of this Court, elaborating the basic nature of the equal protection and due process guarantees, support the view that appellant must be provided with a free transcript.

Transcript cases in this Court have tended not to distinguish between the Equal Protection and Due Process clauses. The reason is that both concepts often apply with equal force. As the Court stated in *Griffin v. Illinois* (351 U.S. at 17):

> "In this tradition, our own constitutional guarantees of due process and equal protection both call for procedures in criminal trials which allow no invidious discriminations between persons and different groups of persons. Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court.'

Chambers v. Florida, 309 U.S. 227, 241. See also, *Yick Wo v. Hopkins*, 118 U.S. 356, 369." See also *Williams v. Illinois*, 399 U.S. 235, 241-242 (1970).

This case tests whether "in every American court" means what it says.

A. The Equal Protection Clause: Illinois Transcript Policy Denies Equal Protection to Poor Persons Appealing From Nonfelony Convictions.

Equal Protection requires that a State, in pursuing its proper purposes, must avoid benefiting or depriving certain groups and not others where to do so is not in rational furtherance of its proper goals.[19] Where fundamental constitutional rights are at stake—here the citizen's right to be free of unwarranted penal sanction—or where the persons affected are not "volunteers" in the judicial process—here indigents convicted of crime—this Court "will squint hard" at the State's classification and require a "compelling interest" to justify the State's burden on or failure to benefit one class. See *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969).

It has long been clear that "money hurdles" to the judicial machinery work an intolerable and unjustifiable burden in fact upon one class—those too poor to pay—without having even the virtue of satisfying the revenue purpose behind the money requirement:

> "Courts are the central dispute-settling institutions in our society. They are bound to do equal justice under law, to rich and poor alike. They fail to perform their function in accordance with the Equal Protection Clause if they shut their doors to indigent plaintiffs altogether. Where money determines not

[19] While the Illinois rule may seem non-discriminatory on its face, this Court has uniformly found a transcript-cost law such as Illinois' "grossly discriminatory in its operation" as applied to indigents. *Griffin v. Illinois, supra*, at 17, n. 11; *Williams v. Illinois*, 399 U.S. 235, 242 (1970).

> merely 'the kind of trial a man gets,' *Griffin v. Illinois, supra,* at 19, but whether he gets into court at all, the great principle of equal protection becomes a mockery. A State may not make its judicial processes available to some but deny them to others simply because they cannot pay a fee. *Cf. Harper v. Virginia Board of Elections,* 383 U.S. 663 (1966)." *Boddie v. Connecticut,* ____ U.S. ____, ____, 91 S.Ct. 780, 792 (1971) (Brennan, J., concurring).

It ill behooves the great purpose Illinois has set for itself—to ensure justice by providing official court reporters and the right to appeal to all persons charged with *any offense*—to draw that "unreasoned" and "invidious" line between rich and poor citizens trapped in the criminal process by *itself* erecting a "money hurdle" to full access to its appellate courts in all cases which are not classified as "felonies." *Griffin v. Illinois,* 351 U.S. at 23 (Frankfurter, J., concurring). See *Harper v. Virginia Board of Elections, supra; Tate v. Short,* ____ U.S. ____, 91 S. Ct. 668 (1971). Imposing a money hurdle to an appeal is no less a denial of equal protection because it takes the form, as here, of a statutory fee for a transcript which is necessary to present a contention on appeal, than it is when a simple filing fee itself is involved. See *Smith v. Bennett,* 365 U.S. 708 (1961); *Burns v. Ohio,* 360 U.S. 252 (1959). Here there is clearly no "compelling state interest" which can be advanced to defeat the demands of the Equal Protection Clause. The State's interest in ensuring that those benefiting from the provision of transcripts pay for them cannot apply to one who by definition cannot pay. As this Court said in *Tate v. Short,* ____ U.S. ____, 91 S. Ct. 668, 671 (1971):

> "Imprisonment [for non-payment of a fine] . . . is imposed to augment the State's revenues but obviously does not serve that purpose; the defendant can't pay because he is indigent. . . ."

And the State's fiscal interest in avoiding the minimal extra costs[20] of providing free transcripts to indigents convicted

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[20] See Section III, post.

of nonfelony offenses is hardly "compelling."[21] See *Griffin v. Illinois*, 351 U.S. 12 (1956); *Shapiro v. Thompson*, 394 U.S. 618 (1969); see also *Boddie v. Connecticut*, *supra* at 788.

B. The Due Process Clause: Denying Convicted Indigents Full Appellate Hearings is Fundamentally Unfair and Violates Due Process of Law.

Illinois Supreme Court Rule 607(b) (*supra* at 2-3) precludes the Illinois Supreme Court from considering those substantial contentions of error, raised by an indigent nonfelony defendant, which require a transcript to prove. While granting an indigent an appeal in form, Illinois is thus denying him a hearing in substance. This is surely giving the poor at best "the right to a meaningless ritual, while the rich man has a meaningful appeal." *Douglas v. California*, 372 U.S. 353, 358 (1963). Such a "mutilation of the right to appeal" is fundamentally unfair. (*Preston v. Municipal Court*, 188 C.A. 2d 76, 10 Cal. Reptr. 2d 301, 306 (1st Dist. Ct. App. 1961).)

As this Court said about a similar procedure:

> "What was impermissible was the total denial to petitioners of any means of getting adequate appellate review on the merits in the State Supreme Court, when no such clog on the process of getting contentions before the State Supreme Court attends the appeals of defendants with money." *Draper v. Washington*, 372 U.S. 487, 498 (1963).

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[21] Additional conceivable State interests such as ensuring the "bona fides" of indigency and protecting against frivolous appeals can be satisfied by "penalties for false pleadings or affidavits, and actions for malicious prosecution or abuse of process, to mention only a few." *Boddie v. Connecticut*, *supra* at 788. And traditional civil processes, such as garnishment and attachment, and possibly probation with a work condition, are available to enforce the debt against a recalcitrant. See *Williams v. Illinois*, *supra* at 244, n. 21.

Regardless of whether a constitutional right to appeal exists,[22] a State may not, consistent with due process, create an appellate system which hears cases not according to their merits but according to the wealth of their participants—an arbitrary system unrelated to the great purpose of vindicating rights by appeal. As part of the *only available* "dispute-settling" mechanism for a citizen forced to defend himself from accusations of crime, the appellate court system must be open to his pleas of injustice without regard to whether he can pay a sum. This result is required if the State's monopoly over the means of settling disputes is to remain legitimate in our society. See *Boddie v. Connecticut*, ___ U.S. ___, 91 S.Ct. 780 (1971). The central position of our courts in reinforcing the deepest values of our culture would be grossly undermined by a ruling that equality before the law is not due to ninety percent of our citizens faced with accusation or conviction of crime.[23]

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[22]The fact that an appellate system has existed in all states for many years indicates its fundamental nature and casts renewed doubt on *McKane v. Durston*, 153 U.S. 684, 687-688 (1894). *Cf. e.g., Malloy v. Hogan*, 378 U.S. 1 (1964); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Benton v. Maryland*, 395 U.S. 784 (1969) (cases overruling prior cases).

[23]"90 percent of the Nation's criminal cases are heard in the lower courts." *President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: The Courts* 29 (U.S. Government Printing Office, 1969). "Few citizens ever have contact with the higher courts. In the main, it is the police and the lower court Bench and Bar that convey the essence of our democracy to the people. Justice, if it can be measured, must be measured by the experience the average citizen has with the police and the lower courts." Patrick V. Murphy, Police Commissioner of New York City, in "The Role of the Police in Our Modern Society," The Record of the Association of the Bar of the City of New York, Vol. 26, No. 4, p. 292, 293 (April, 1971).

III.

GRANTING DEFENDANT HIS TRANSCRIPT WILL NOT UNREASONABLY BURDEN THE STATE.

It may be anticipated that the City will argue that defendant, and like-situated indigents, should be denied his Fourteenth Amendment right to a free transcript for appeal because to grant him his right might somehow irreparably burden the State fiscal system. Prior holdings of this court indicate that, as applied here, this argument is not legitimate or relevant at all. For example, in *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969), holding unconstitutional a one-year residency requirement for welfare benefits, this Court stated flatly that:

> "We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. . . . But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. . . . The saving of welfare costs cannot justify an otherwise invidious classification."[24]

However, if such an argument is legitimate, a heavy burden is upon the State to prove that its financial interest in defeating defendant's Fourteenth Amendment right to "equal and open access" to appeal is "compelling." *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969).

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[24]And this Court stated in *Williams v. Illinois*, 399 U.S. 234, 245 (1970):

> "The constitutional imperatives of the Equal Protection Clause must have priority over the comfortable convenience of the status quo."

Moreover, this "cost-burden" argument has been rejected, explicitly or implicitly, in every case in this Court involving procedural due process rights, especially in indigent transcript cases. See *Griffin v. Illinois*, 351 U.S. 12 (1956); *Williams v. Oklahoma City*, 395 U.S. 458 (1969); *cf. In Re Gault*, 387 U.S. 1, 15 n. 14 (1967) (juvenile proceedings); *Boddie v. Connecticut*, ___ U.S. ___, 91 S. Ct. 780 (1971) (filing fee for divorce); *Gideon v. Wainright*, 372 U.S. 335 (1963) (right to counsel at trial); *Hamilton v. Alabama*, 368 U.S. 52 (1961) (right to counsel at preliminary hearings).

This heavy burden cannot be met. Rather, available figures overwhelmingly suggest that the total cost of providing free transcripts on appeal from nonfelony convictions to indigents needing them will probably be even less than the cost of providing such transcripts in felony cases, which is itself not very great. For the *entire State of Illinois* in 1970, the cost of supplying free transcripts to indigents appealing (felony) convictions was only $223,474.[25] Thus, the argument that granting indigent persons who chose to appeal their convictions for nonfelony offenses a free transcript if they need it will "break the back" of the States' fiscal system is both wholly unsupported by the evidence and ludicrous in terms of comparable expenditures of State or local funds for other purposes.[26]

Those who argue the burdensomeness of allowing the exercise of an indigent's Fourteenth Amendment rights to a transcript in nonfelony cases do so by pointing to an obvious but highly misleading fact: that there are many

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[25] Information supplied by the Chicago office of the Administrative Office of Illinois Courts. See also, *The Illinois State Budget Fiscal 1972*, p. 26, submitted to the 77th General Assembly by Richard Ogilvie, Governor. By contrast, the Circuit Court of Cook County, Illinois, took in as revenue almost twice that amount in "library fees" alone in 1970, and indeed had a total revenue of over $31 million, principally from fines. *Statistical Report, Cases, Fees, Fines and Cost, Dec. 1-Nov. 30, 1967-1970*, 1 (prepared for the Circuit Court of Cook County by its Clerk, Matthew Danaher) [hereinafter "Danaher Statistical Report"]. Cook County and the City of Chicago together appropriated for 1971 for "civil defense" over double the amount of total Illinois transcript costs. *The Annual Appropriation Ordinance of the City of Chicago for 1971*, Journal of Proceedings of the City Council, Dec. 11, 1970 at 9612; *The Annual Appropriation Bill of Cook County for the Fiscal Year 1971* p. 112.

[26] For example, the annual budget of the City of Chicago for the Bureau of Sanitation is over $45 million, the Fire Department is over $72 million and the Police Department is over $210 million. *The Annual Appropriation Ordinance of the City of Chicago for 1971*, Journal of Proceedings of the City Council, Dec. 11, 1970, at p. 9593, 9594, 9596.

more arrests and convictions for misdemeanor and ordinance violations each year than there are for felony violations. In the District of Columbia, for example, one thorough study showed a nonfelony-felony arrest ratio of about 28 to 1.[27] And in 1970 in the Circuit Court of Cook County, Illinois, there were only 5,184 felony determinations, excluding pleas or dismissals at preliminary hearing,[28] while in Chicago in the same year there were over 1 million final nonfelony (misdemeanor, ordinance and traffic) determinations.[29] For reasons which will become apparent, however, the magnitudes implicit in these relationships do not carry through into the appellate docket; indeed, these figures bear absolutely no relation to the probable relative costs of providing free transcripts to indigents convicted of felony as opposed to nonfelony offenses.

Four reasons account for this result: (1) the vast majority of nonfelony charges is disposed of without trial—by forfeiture, plea or dismissal;(2) of those that result in conviction after a trial, very few are appealed; (3) very few that are appealed require a transcript; and (4) since most nonfelony trials are very short in duration, those transcripts that are required on appeal are not lengthy.

The first reason—the high rate of dispositions without trial—is highly significant on two grounds: first, it shapes

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[27]In 1965, there were about 176,000 adult arrests for ordinance violations and minor misdemeanors, and only 6,266 felony arrests in the District of Columbia. *Report of the President's Commission on Crime in the District of Columbia*, 232, Figure 1. (U.S. Government Printing Office 1966.) [Hereinafter "D.C. Crime Commission."]

[28]"Determinations" include acquittals, dismissals, and guilty pleas, as well as convictions. *Danaher Statistical Report, supra* at 5 (computed). Of course, excluding those final determinations which occur at the preliminary hearing stage disproportionately enlarges the resultant comparison.

[29]*Danaher Statistical Report, supra* at 10, 12 (excludes parking tickets); *Administrative Office of the Illinois Courts, Statistical Bulletin for the Calendar Year 1969*, p. 6.

the size of the category "convictions after trial," which is the total universe of cases in which there could possibly be an appeal and a transcript (excluding transcripts of guilty pleas); second, the rate of dispositions without trial is totally inelastic to possible expansion because of the announced availability of transcripts on appeal to qualifying indigents—that is, no one is going to fail to plead guilty, or refuse to permit the dismissal of his charges, or press his right to trial instead of accepting forfeiture simply because, if indigent, he is assured of a transcript on appeal.

It is a simple and oft repeated fact that the number of actual convictions after trial in nonfelony cases nowhere near approximates the number of charges filed or arrests made. In Chicago, for example, of slightly over 1 million nonfelony determinations in 1969, including misdemeanors, ordinance violations and traffic, approximately 800,000 were in traffic cases,[30] the vast bulk of which were forfeitures or mail-in fines.[31] Because Illinois does not keep statistics appropriate to the task, it is not possible to determine with exactness how many of these 800,000 traffic cases resulted in a trial and conviction. However, in New York City, of 2 million such traffic cases recorded in 1964 and 1965, 98% resulted in non-appealable pleas of guilty.[32] Presumably the situation in Illinois and elsewhere would be the same. Con-

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[30] Administrative Office of the Illinois Courts, *Statistical Bulletin, supra* note 29 (excludes parking tickets). There were 809,287 final traffic determinations in Chicago in 1969. In 1969-1970 in Chicago there were only 24,376 convictions after court hearing in parking cases out of 2,833,325 complaints filed. *Danaher Statistical Report, supra* at 12.

[31] See Annual Report of Administrator of U.S. Courts, 1969, pp. 98-99 (U.S. Government Printing Office); *D.C. Crime Commission, supra* at 231.

[32] Figures come from the New York Court of Appeals in *People v. Letterio*, 16 N.Y.2d 307, 213 N.E.2d 670, 674 (1965) (dissenting opinion of Chief Justice Desmond).

victions after trial account for a tiny fraction of the remaining 2%, which also includes dismissals, acquittals and decisions not to appeal. Most importantly, as Chief Justice Desmond of the New York Court of Appeals notes:

> "Since almost all of these defendants [in traffic cases] are either owners of automobiles or employed as drivers of automobiles the number who could successfully plead indigence would be very small indeed." *People v. Letterio*, 16 N.Y. 2d 307, 213 N.E. 2d 670, 674 (1965) (dissenting opinion).

Thus traffic cases—accounting for the vast bulk of nonfelony convictions—are not a fertile source for indigent transcript appeals.[33]

Excluding traffic cases, Chicago in 1970 recorded 38,849 findings of guilty in nonfelony cases (all misdemeanor and ordinance offenses) including both convictions after trial and also pleas of guilty. There were 2,800 total guilty findings in felony cases, thus indicating a 14 to 1 proportion between nonfelonies and felonies as to total guilty determinations (excluding traffic cases), including guilty pleas.[34] In order to arrive at the total universe of "convictions after trial," which defines the outer limits of possible free transcript requests, the guilty pleas must be removed from this proportion. When that is done, the proportion is reduced to about 3 or 4 to 1 nonfelony to felony convictions after trial.[35] For the City of Chicago in 1970, this means under

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[33]Moreover, most of these cases are not "penal" but are "regulatory" as that term has been defined, and do not involve serious fines or jail, culpability, and stigma as do defendant's offenses. See discussion at note 18, *infra*.

[34]Felony figures are for all Cook County and not just Chicago because Chicago felony figures are not available. *Danaher Statistical Report, supra* at 5, 10.

[35]Because no figures are available for percent of guilty pleas in nonfelony cases in Chicago, this computation unfortunately must be accomplished somewhat indirectly. We know that 81.3% (or 2,274)

2,000 total possible nonfelony free transcript requests, assuming everyone who was convicted was indigent, decided to appeal, and needed a transcript to do so. Of course such assumptions are utterly unreal.

In order to arrive at a proper estimate of the cost of supplying transcripts to indigent appellants in nonfelony cases relative to felony cases, this 3 or 4 to 1 proportion applicable to "convictions after trial" must be further refined in the light of the three significant factors mentioned before: (1) fewer nonfelony than felony convictions are actually appealed, (2) fewer nonfelony than felony appeals probably require transcripts, and (3) the average nonfelony trial (and thus transcript) is far shorter than the average felony trial.

As to the first factor, the relative number of nonfelony appeals, it is a striking fact that our appellate systems are so relatively free of them. A study of the appellate system in Washington, D.C., for example, found that felony appeals outnumber nonfelony appeals by 3.4 to 1.[36] Although one might argue that making free transcripts available to indi-

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of the felony convictions in Chicago in 1970 followed guilty pleas, and 18.7% (or 526) did not. *Danaher Statistical Report, supra* at 5. Figures from other cities show a remarkably uniform 95% nonfelony guilty plea rate. There is no reason to believe Chicago is atypical in this regard. Applying this 95% rate to Chicago would mean that there were 36,900 guilty pleas and 1,945 convictions after trial in nonfelony cases in 1970. See Jennings, *The Flow of Arrested Adult Defendants Through the Manhattan Criminal Court in 1968 and 1969* (1970), p. 6 (calculated from Table 2); Newman, *Conviction: The Determination of Guilt or Innocence Without Trial*, 1, n. 1 (1966); Oaks & Lehman, *A Criminal Justice System and the Indigent*, p. 147, n. 344 (1968).

[36]In 1965, there were 237 felony appeals filed and only 70 appeals in all misdemeanor, ordinance and traffic cases. *D.C. Crime Commission, supra* at p. 302, Table 35; p. 290, Table 28. In the District at the time of this study, convictions resulting in fines of $50 or more, or any confinement, were appealable of right, while those sentenced to less than $50 had to apply for the allowance of an appeal. 11 D.C. Code § 741 (Supp. V, 1966).

gents in nonfelony appeals will narrow this margin, such a result seems highly improbable. Rather, it seems that the "demand" for appeals by indigents in nonfelony cases is almost totally inelastic with respect to the furnishing of free transcripts; that is, the rate of appeal does not depend upon the availability of free transcripts. This is because it is not the lack of free transcripts for indigents that is restricting the flow of appeals in these cases, but other factors relating both to the burden of appeal relative to possible gains where serious penalties are not involved—delays, prolongation of uncertainty, probability of affirmance, and the like—and also, and most importantly, to the fact that most indigents serve out their sentences or "work off" their fines before their appeals can be heard because of their inability to post pretrial or post-trial bail.[37]

The second important factor reducing the relative cost of transcripts for nonfelony appeals proportionate to felony

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[37] ". . . [A] convicted misdemeanant has little incentive to appeal; he would usually have served his sentence before the appeal could be heard." Oaks & Lehman, *A Criminal Justice System and the Indigent*, p. 146 (1968). A study of "serious misdemeanors" in the District of Columbia revealed, for example, that only 31 of 792 defendants convicted after trial appealed, whereas for felonies 237 of 265 defendants convicted after trial appealed. *D.C. Crime Commission, supra* at 241, 275. In Illinois, as in many states, time served while awaiting trial is credited against any sentence or fine received after conviction, at the $5 per day rate for fines. See 38 Ill. Rev. Stat. § 119-3; *People v. Carroll*, 76 Ill. App. 2d 9, 221 N.E.2d 528 (1966); *cf. Tate v. Short*, ___ U.S. ___, 91 S. Ct. 668 (1971). Surveys show that large percentages of felony defendants are incarcerated before trial for inability to make bail; sample figures in large urban areas run from 79% of defendants in St. Louis, 75% in Baltimore and 71% in Miami to 54% in Boston, 48% in Detroit and 44% in New Orleans. Freed and Wald, *Bail in the United States: 1964*, 40-41. Presumably nonfelony percentages would run somewhat smaller because lower bonds are usually set, but the indigent who might later need a free transcript is by definition far less likely than the average arrestee to be able to find bond money for pre-trial or post-trial release.

appeals below the 3 or 4 to 1 ratio applicable to "convictions after trial," is the fact that the overwhelming proportion of nonfelony trials are short and perfunctory, requiring, if appealed by indigents, only very brief transcripts if transcripts are needed at all. For example, one careful observer of an urban court processing serious misdemeanors found that "the great majority of trials are completed within an hour." Subin, *Criminal Justice in a Metropolitan Court*, p. 82 (Office of Crim. Justice 1966). In ordinance cases, another study calculated an average disposition time of 2 minutes per case. *D.C. Crime Commission, supra* at 280. Clearly, then, the average length of the transcript decreases with the seriousness of the offense. At 75¢ or less per page, the "burden" to the State of furnishing indigents with free transcripts in these brief ordinance cases would be trivial.[38] And the brevity of the usual case suggests that, unlike defendant's case here, reconstruction of the evidence apart from a transcript is ordinarily feasible.

As to the third factor—the relatively less frequent need for a transcript in nonfelony appeals, the important relationship is the relative incidence of juries in felony and nonfelony trials. The importance of the presence or absence of a jury for purposes of appeal lies in the fact that few appellate courts consider close questions of prejudice through the improper admission of evidence or improper argument or conduct in non-jury cases, and thus few convictions involving that sort of issue will be appealed.[39] In this regard it is a fact that very few ordinance and misdemeanor cases are tried before juries even where juries are available. Although figures are scarce, those available from Oklahoma City show slightly over 1% of ordinance charges filed result in jury

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[38]See 37 Ill. Rev. Stat. § 655 (statutory rate of $.25 per 100 words).

[39]For felony appeals, reversals by one court of last resort turned on legal issues not requiring a transcript in 68% of the cases. *D.C. Crime Commission, supra* at 314, Table 46 (computed).

trials,[40] and those from the District of Columbia show slightly over 2½% of "serious misdemeanor" charges filed result in jury trials.[41] In felony cases, on the other hand, in some locations it is the rare case which does not go to the jury. In the District of Columbia in 1966, for example, less than one out of every ten trials was before a judge without a jury, *D.C. Crime Commission, supra* at 246, Table 7, and nationally, about 60 percent of trials for major crimes are before juries. Kalven & Zeisel, *The American Jury*, 18, Table I (1966).

In summary, the evidence clearly demonstrates that the total cost of providing nonfelony indigents with transcripts will most likely be *less* than that for felony indigents.[42] Thus the exercise by indigents convicted of nonfelony offenses of their right to a free transcript on appeal will not unreasonably "burden" the State's fiscal system. That treacherous notion must be finally interred.

Two further considerations are important. First, several of the most populous states in this country already grant free transcripts to all indigent defendants needing them

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[40]Of 2.305 ordinance charges filed in Oklahoma City in 1968, only 30 went to jury trial. Brief of Petitioner at 45, Appendix C, *Williams v. Oklahoma City*, 395 U.S. 458 (1969) (Oct. Term 1968, No. 841); see also Kalven & Zeisel, *The American Jury*, 18, n. 12 (1966).

[41]*D.C. Crime Commission, supra* at 275, Figure 4.

[42]Moreover, to lower costs still further a state might choose to institute an installment payment plan for those with some income, but which is insufficient to permit lump sum payments. See *Tate v. Short*, ___ U.S. ___, 91 S. Ct. 668 (1971); *Williams v. Illinois*, 399 U.S. 235, 244-45, 264 (1970); *Rinaldi v. Yeager*, 384 U.S. 305 (1966). Such a system would appear to be effective; the appellant, seeking benefits from the court, has an incentive to repay. A survey of one State's practice of seeking repayment for appointed counsel as a condition of probation, a closely analogous situation, found that "this condition of probation is rarely, if ever, violated." *Kamisar & Choper*, "The Right to Counsel in Minnesota: Some Field Findings, and Legal-Policy Observations," 48 Minn. L. Rev. 1, 24 (1963).

regardless of the nature of the offense for which they were convicted. Indeed, in New York this rule derives from state law and long preceded *Griffin v. Illinois.* If providing free transcripts to all persons needing them and unable to pay for them does not unreasonably burden New York and California,[43] among other states, it will not do so to Illinois. And more states are now undertaking to provide free *counsel* for the *trial* of municipal and traffic cases—a far more "burdensome" undertaking than a transcript for appeal. See, *e.g., Rodriguez v. Rosenblatt,* Supreme Court of New Jersey, September Term 1970, No. A-77, Decided May 10, 1971.

Secondly, it ill behooves a city in which the judicial system returns an enormous revenue into local coffers to argue that improving the quality of justice, by providing indigents with free transcripts (and thereby incurring relatively insignificant marginal or additional costs), somehow creates an unmanageable "burden". In fiscal 1970, for instance, the Circuit Court of Cook County had revenue, mostly from fines, amounting to over $31 million, of which of $26 million came from the Municipal Department—the very court which processes all misdemeanor, quasi-criminal and traffic cases in Cook County and which convicted defendant.[44] It seems, indeed, that in many or possibly all juris-

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[43] California: Deering's Government Code §§ 72195, 69952; *In Re Henderson,* 61 Cal. 2d 541, 39 Cal. Rept. 373, 393 P.2d 685 (1964) ("disorderly conduct"); *Muller v. Municipal Ct.,* 259 C.A.2d 177, 66 Cal. Rept. 367 (1968) (parking); *Preston v. Municipal Ct.,* 188 C.A.2d 76, 10 Cal. Reptr. 301 (1961). New York: McKinney's Consol. Laws of N.Y. Ann., Vol. 66, §§ 756, 456; Vol. 29A, Part 3, N.Y.C. Criminal Court Act, §§ 40, 43, 91; Uniform District Court Act, §§ 2018, 2006; *People v. Freeman,* 44 Misc. 2d 1016, 255 N.Y.S.2d 563 (Seneca County Court 1965); *People v. Collins,* 38 Misc. 2d 952, 239 N.Y.S.2d 274 (Erie County Court 1963); *People v. Sporborg,* 57 Misc. 2d 140, 292 N.Y.S.2d 162 (1968) (Sup. Ct. App. Term). See also *Tate v. United States,* 123 U.S. App. D.C. 261, 359 F.2d 245 (1966).

[44] *Danaher Statistical Report, supra* at 1.

dictions, the courts actually do turn a profit,[45] thus possibly making them the only public service which is financially self-sustaining.

These facts clearly demonstrate that the "burden" argument is both fanciful in its fear and without basis in fact.

IV.

THE JUDICIAL SYSTEM AND SOCIETY WILL GREATLY BENEFIT IF ALL CONVICTED INDIGENTS ARE INSURED ACCESS TO THEIR TRIAL TRANSCRIPTS.

It has become commonplace to point out that the urban courts which "process" misdemeanor and penal ordinance violations do so in a manner which belies the grand phrases "Equal Justice under Law" and "Due Process of Law," and gives those phrases quite a different practical meaning.[46] As

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[45] In the District of Columbia, while $4.7 million was collected in revenue by the District's Court of General Sessions, which handles 97% of all its civil and criminal litigation, costs ran only $2.2 million. *D.C. Crime Commission, supra* at 283. The City of Oklahoma spent $217,675 for the general operation of its municipal courts in fiscal 1967-1968, while collecting $1,553,205 in fines and costs. Brief of Petitioner, at 43, Appendix B, *Williams v. Oklahoma City*, 395 U.S. 458 (1969).

[46] "An observer in the lower criminal courts ordinarily sees a trial bearing little resemblance to those carried out under traditional notions of due process . . . Rules of evidence are largely ignored. Speed is the watchword. Trials in misdemeanor cases may be over in a matter of 5, 10 or 15 minutes; they rarely last an hour even in relatively complicated cases. Traditional safeguards honored in felony cases lose their meaning in such proceedings; yet there is still the possibility of lengthy imprisonment or heavy fine.

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"Observers have sometimes reported difficulty in determining what offense is being tried in a given case . . ." *President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts* 30, 31 (Government Printing Office, Washington, D.C. 1967) [hereinafter "Task Force Report"].

Charles Evans Hughes said over 50 years ago in words that stand forcefully today:

> "The Supreme Court of the United States and the Court of Appeals will take care of themselves. Look after the courts of the poor, who stand most in need of justice. The security of the Republic will be found in the treatment of the poor and the ignorant; in indifference to their misery and helplessness lies disaster." Address by Charles E. Hughes, N.Y. State Bar Ass'n 42d Ann. Meeting, in *1919 Proceedings of the N.Y. State Bar Ass'n.* 224, 240-241.

And from the New York City Commissioner of Police, we hear:

> "Few citizens ever have contact with the higher courts. In the main, it is the police and the lower court Bench and Bar that convey the essence of our democracy to the people.
>
> "Justice, if it can be measured, must be measured by the experience the average citizen has with the police and the lower courts."[47]

The great danger is that Justice in our police and lower courts will be measured thinly in every case. The best, and universally available safeguard against this danger is the right to secure appellate review. But for the indigent without funds to buy a transcript, a meaningful review of the conduct of his trial is beyond reach. That this is so, and known to be so, creates "a license for arbitrary procedure". *Kent v. United States,* 383 U.S. 541, 553, 561 (1966). Overworked and harassed courts and prosecutors, conscious of

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[47]Patrick V. Murphy, "The Role of the Police in Our Modern Society," The Record of the Association of The Bar of The City of New York City, Vol. 26, No. 4, p. 292, 293 (April, 1971). After reviewing the conditions in our nation's lower criminal courts, the President's Commission on Law Enforcement and Administration of Justice was "shocked by what it has seen." *The Challenge of Crime in a Free Society,* 128 (U.S. Gov. Printing Office, Washington, D.C. 1967). See also *D.C. Crime Commission, supra* at 280-281.

the practical unavailability of review, will tend to lean away from due process rather than towards it.[48] On the other hand, the prospect of each convicted indigent having access to his transcript will go far toward insuring that no one suffers the sort of trial described by these Presidential Commissions and observable every day in courtrooms across the land. Indeed, in New York, the importance of available review is considered so great in these cases that a transcript is an *indispensable* part of the record on appeal, and all cases, including traffic cases, must be transcribed. *People v. Schenkel*, 256 N.Y. 539, 177 N.E. 131 (Ct. App. 1931); *People v. Newhart*, 235 N.Y.S. 2d 330 (Schuyler County Ct. 1962); *People v. Saalfield*, 14 N.Y. 2d 915, 252 N.Y.S. 2d 320, 200 N.E. 2d 862 (1964). As the New York Court of Appeals stated in *People v. Giles*, 152 N.Y. 136, 140, 46 N.E. 326, 328 (1897):

> "Our magistrates are invested with important powers. . . . Their determinations, in many instances, involve the liberties and property of citizens. To permit them to exercise these important powers without keeping any minutes or records of the testimony upon which their determinations can be reviewed, would be contrary to public policy, and would be investing them with autocratic powers greater than those possessed by any other officer of the government."

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[48]This tendency towards informality and disregard, a product of "unbridled discretion" in fact, has been described:

> "Other defects in the justice-of-the-peace courts arise from the lack of supervision and control of their activities. Questionable practices may often go unchecked.
>
> * * * * *
>
> "[F]or the most part the individual justice works below the threshold of judicial visibility. His acts are very often discretionary in nature and are seldom subject to judicial review . . . . Moreover, the failure to maintain adequate records for all justices . . . means that the entire system is likewise obscure in its outline and workings." *Task Force Report, supra* at 35.

See also *Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates*, Rules 2(d)(3) and 3(c)(2), 91 Sup. Ct. Rept'r, 4-5 (1971).

Members of this Court have echoed this concern:

> "[J]ustice demands an independent and objective assessment of a district judge's appraisal of his own conduct of a criminal trial." *Coppedge v. United States*, 369 U.S. 438, 455-456 (1962) (concurring opinion of Stewart, J.).

Thus it can be seen that providing a right to a free transcript to all indigent appellants, and not just to those convicted of felonies, will greatly improve the quality of justice far beyond those few who actually will avail themselves of their right. For the vast bulk of citizens caught in the criminal process, this country shall have taken another important step along the road to a fairer system of law.

CONCLUSION

Wherefore, defendant prays that the judgment of the Supreme Court of Illinois appealed from be reversed with instructions that defendant be afforded a transcript of his trial proceedings without costs to him for use on appeal, as would be provided under Illinois Supreme Court Rule 607(b) were he convicted of a felony, or, in the alternative, that his judgments of conviction be vacated and expunged.

Respectfully submitted,

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ADDITIONAL CONSTITUTIONAL, STATUTORY AND OTHER PROVISIONS INVOLVED

A. THE CRIMES

1. CITY "DISORDERLY" ORDINANCE:

"A person commits disorderly conduct when he knowingly:

(a) Does any act in such unreasonable manner as to provoke, make or aid in making a breach of the peace."

"A person convicted of disorderly conduct shall be fined not less than $5.00 nor more than $500.00 for each offense." Municipal Code of Chicago, § 193-1a (1969)—Disorderly Conduct.

2. CITY "INTERFERRING" ORDINANCE:

"(a) Any person who knowingly shall resist or obstruct the performance by one known to the person to be a peace officer or any authorized act within his official capacity or shall knowingly interfere or prevent a peace officer from discharging his duty as such officer and whoever shall in any manner knowingly assist any person in the custody of any member of the police department to escape or attempt to escape from such custody, shall be fined not less than $25.00 nor more than $500.00.

"(b) For the purposes of this section 'resist' shall mean passive as well as active resistance." Municipal Code of Chicago § 11-33 (1969)—Interferring with a Peace Officer.

3. STATE "INTERFERRING" STATUTE:

"Resisting or Obstructing a Peace Officer. A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his official capacity shall be fined not to exceed $500.00 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both." 38 Ill. Rev. Stat. § 31-1.

4. STATE "DISORDERLY" STATUTE:

"Elements of the Offense.

"(a) A person commits disorderly conduct when he knowingly:

"(1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace;

* * * * *

"(b) Penalty.

"A person convicted of a violation of subsection 26-1 (a) (1) or (a) (2) shall be fined not to exceed $500.00." 38 Ill. Rev. Stat. § 26-1 (Disorderly Conduct).

B. ILLINOIS CONSTITUTIONAL PROVISIONS

RIGHTS OF THE CITIZEN

Due Process:

"No person shall be deprived of life, liberty or property, without due process of law." Constitution of Illinois 1870, Article II, § 2.

Trial by Jury:

"The right of trial by jury as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace by a jury of less than twelve men may be authorized by law." Constitution of Illinois 1870, Article II, § 5.

Trial by Jury:

"In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation and to have a copy thereof, to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the

county or district in which the offense is alleged to have been committed." Constitution of Illinois 1870, Article II, § 9.

Right to a Remedy for a Wrong and to Free Justice:

"Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay." Constitution of Illinois 1870, Article II, § 19.

Right to Appeal:

"Appeals from the final judgments of Circuit Courts shall lie directly to the Supreme Court as a matter of right only (a) in cases involving revenue, (b) in cases involving a question arising under the Constitution of the United States or of this State, (c) in cases of habeas corpus, and (d) by the defendant from sentence in capital cases. Subject to law hereafter enacted, the Supreme Court has authority to provide by rule for appeal in other cases from the Circuit Courts directly to the Supreme Court." Constitution of Illinois 1870, Article VI, § 5.

"In all cases, other than those appealable directly to the Supreme Court, appeals from final judgments of a Circuit Court lie as a matter of right to the Appellate Court in the district in which the Circuit Court is located, except that after a trial on the merits in a criminal case no appeal shall lie from a judgment of acquittal. The Supreme Court shall provide by rule for expenditious and inexpensive appeals." Constitution of Illinois 1870, Article VI, § 7.

One Circuit Court:

"There shall be one Circuit Court for each judicial circuit which shall have such number of circuit and associate judges

and magistrates as may be prescribed by law; . . ." Constitution of Illinois 1870, Article VI, § 8.

"The Circuit Court shall have unlimited original jurisdiction of all justiciable matters, and such powers of review of administrative action as may be provided by law." Constitution of Illinois 1870, Article VI, § 9.

C. RULES OF THE ILLINOIS SUPREME COURT

ALTERNATIVES TO A TRANSCRIPT:

Rule 323(c): Procedure for a Settled Statement for Appeal:

"Procedure If No Verbatim Transcript Is Available. If no verbatim transcript of the evidence or proceedings is obtainable, the appellant may prepare a proposed report of proceedings from the best available sources, including recollection. It shall be served within seven days after the notice of appeal is filed. Within 21 days after the notice of appeal is filed, any other party may serve proposed amendments or his proposed report of proceedings. Within seven days thereafter, the appellant shall, upon notice, present the proposed report or reports and any proposed amendments to the trial court for settlement and approval. The court, holding hearings if necessary, shall promptly settle, certify, and order filed an accurate report of proceedings." 110A Ill. Rev. Stat. § 323(c) (1969).

Rule 323(d): Agreed Statement of Facts (For Appeal):

"The parties by written stipulation may agree upon a statement of the facts material to the controversy and file it in lieu of and within the time for filing a report of proceedings." 110 Ill. Rev. Stat. § 323(d) (1969).

PROVISIONS FOR FREE TRANSCRIPTS

(See also Rule 607(b), *infra*, p. 2-3)

Rule 661(b): Report of Proceedings (Juvenile Cases):

"In all proceedings in which a minor is found to be a delinquent, the minor may petition the circuit court for a transcript of the adjudicatory and dispositional hearings. The petition shall be verified by the petitioner and shall state facts showing that he was at the time of his adjudication of delinquency, and is at the time of the filing of the petition, without financial means to pay for the transcript. If the judge who made the order of disposition, or in his absence any other judge of the court, finds that the minor is without the financial means to obtain a transcript of his hearings, he shall order the court reporter to transcribe an original and copy of his notes. The original of the transcript shall be certified by the reporter and filed with the clerk of the circuit court, and the copy shall be certified by the reporter and delivered to the minor without charge. The reporter who prepares a transcript pursuant to an order under this rule shall be paid the same fee for preparing the transcript as is provided by law for the compensation of reporters for preparing transcripts in other cases." 110A Ill. Rev. Stat. § 661(b) (1969).

Rule 651(c): Record for Indigents; Appointment of Counsel (Post-Conviction Proceedings):

"Upon the timely filing of a notice of appeal in a post-conviction proceeding, if the trial court determines that the petitioner is indigent, it shall order that a transcript of the record of the post-conviction proceedings, including a transcript of the evidence, if any, be prepared and filed with the Clerk of the Supreme Court and shall appoint counsel on appeal, both without cost to the petitioner." 110A Ill. Rev. Stat. § 651(c) (1970).

D. OTHER STATUTORY PROVISIONS

STATUTORY PROVISION FOR TRANSCRIPT OF TRIAL FOR POST-CONVICTION PROCEEDING:

"(2) Duties of reporters in proceedings arising under post-conviction hearing act. In any case arising under 'An Act to provide a remedy for persons convicted and imprisoned in the penitentiary, who assert that rights guaranteed to them by the Constitution of the United States or the State of Illinois, or both, have been denied, or violated, in proceedings in which they were convicted', approved August 4, 1949, in which the presiding judge has determined that the post-conviction petition is sufficient to require an answer, it shall be the duty of the official court reporter to transcribe, in whole or in part, his stenographic notes of the evidence introduced at the trial in which the petitioner was convicted, if instructed so to do by the State's Attorney or by the court.

"(3) The official court reporter shall transcribe and furnish an original and copy of the proceedings at the trial of any person sentenced to any imprisonment where, pursuant to Rule ____ of the Illinois Supreme Court, an order is or had been entered so requiring." 37 Ill. Rev. Stat. §163(f)(2) and (3).

STATUTORY PROVISION OF COURT REPORTER AND FEE:

"Means of reporting—Transcripts. The court reporter shall make a full reporting by means of stenographic hand or machine notes, or a combination thereof, of the evidence and such other proceedings in trials and judicial proceedings to which he is assigned by the chief judge, and the court reporter may use an electronic instrument as a supplementary device.

* * * * *

"The court reporter shall furnish forthwith one transcript of the evidence and proceedings in a trial or other judicial proceeding correctly made to any party to the trial or pro-

ceeding upon the request of such party of his attorney. Unless and until provided in a Uniform Schedule of Charges which may hereafter be provided by rule or order of the Supreme Court a court reporter may charge not to exceed 25¢ per 100 words for making transcripts of his notes. The fees for making transcripts shall be paid in the first instance by the party in which behalf such transcript is ordered and shall be taxed in the suit." 37 Ill. Rev. Stat. § 655 (1969).

STATUTORY PROVISION FOR "WORKING OFF" FINES IN ORDINANCE CASES:

"Punishment for violation of ordinance. In all actions for the violation of any municipal ordinance, . . . [t]he person upon whom any fine or penalty is imposed, upon the order of the court or magistrate before whom the conviction is had, may be committed to the county jail as provided in Section 11-3-2 or to any place provided by ordinance for the incarceration of offenders until the fine, penalty, and costs are fully paid. No imprisonment, however, shall exceed 6 months for any one offense.

"The corporate authorities may provide by ordinance that every committed person shall be required to work at whatever labor his strength permits, within and without the place of incarceration, not to exceed 10 hours each working day. The committed person shall be allowed, exclusive of his board, a credit of $5 for each day's work on account of the fine, penalty, and costs." 24 Ill. Rev. Stat. § 1-2-9.